

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Cox Southwest Holdings, LP	)	CSR 6877-E
d/b/a Cox Communications West Texas	)	CSR 6878-E
	)	CSR 6879-E
	)	CSR 6880-E
	)	CSR 6881-E
	)	CSR 6882-E
	)	CSR 6883-E
	)	CSR 6884-E
	)	CSR 6885-E
	)	CSR 6886-E
)	
)	
Ten Unopposed Petitions for Determination of)	
Effective Competition in 17 Local Franchise Areas)	
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)	

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 2007

Released: March 2, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Cox Southwest Holdings, LP (“Cox”) has filed ten unopposed petitions with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that Cox is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission's implementing rules,² and is therefore exempt from cable rate regulation in the communities listed in Attachment A (the “Communities”). No opposition to any petition was filed. We grant the petitions finding that the Cox systems are subject to effective competition in the Communities listed in Attachment A, and deny with respect to two franchising areas, the City of Tye, Texas and the Village of Lake Tanglewood, Texas.

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(2).

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁶ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁷ The two DBS providers' subscriber growth reached approximately 26.1 million as of June, 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and EchoStar has become the third largest, MVPD provider.⁸ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the Communities listed in Attachment A are DBS subscribers, we conclude that the population of the Communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁹ We further find that Cox has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area.¹⁰ Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Cox sought to determine the competing provider penetration in the Communities by purchasing a

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

⁶ 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁷ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ See *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11, 21 FCC Rcd 2503 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

⁹ See 47 C.F.R. § 76.905(g).

¹⁰ Cox Petition at Exhibit 4.

subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis. Cox asserts that it is the largest MVPD in the Communities because their subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹¹ Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Cox has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities listed in Attachment A. Therefore, the second prong of the competing provider test is satisfied with respect to these Communities. Based on the foregoing, we conclude Cox has submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.¹²

5. With respect to the City of Tye, Texas and Village of Lake Tanglewood, Texas, however, we reach a different conclusion. Cox provides the requisite 2000 Census total community occupied households information for these communities, and provides numbers relating to occupied households by zip code, but it does not indicate which zip codes pertain to which communities.¹³ Further, the 2000 Census information is significantly lower than the unidentified zip code information in these communities.¹⁴ Given this discrepancy, and Cox's failure to indicate which zip codes correspond to which communities, it is impossible for the Commission to accurately calculate whether effective competition is present in the relevant areas. For this reason, we find that the second prong of the competing provider test is not met with regard to Tye and Lake Tanglewood. In reaching this conclusion, we do not suggest that the calculations provided for Tye and Lake Tanglewood are incorrect. Rather, Cox has not provided sufficient information to confirm their analysis. Accordingly, we deny the Petition with respect to those franchise areas. Our denial with respect to Tye and Lake Tanglewood is without prejudice to refiling should Cox later choose to provide additional or corrected information.

¹¹ In the Petitions involving Shallowater, Wolfforth and Lubbock, Cox was not able to determine the largest MVPD because the DBS providers' aggregated subscriber counts were larger than Cox's subscriber count, and because of the presence of additional MVPDs. In those instances, Cox was able to establish that the competing provider test was met because the penetration rate of both the DBS providers and Cox exceeded the 15 percent rate required by the competing provider test.

¹² Given that these Communities are subject to effective competition under the competing provider standard, it is not necessary to address Cox's arguments regarding LEC effective competition.

¹³ In fact, Cox does not provide corresponding zip code information for any community in its petition. *See* Cox Petition, Exhibits 1, 3. Yet, the Commission was able to independently verify the corresponding zip code information for all communities, except Lake Tanglewood and Tye.

¹⁴ Cox Petition, Exhibits 1, 3. The 2000 Census information indicates that there are 342 total community occupied households in Lake Tanglewood, while the total zip code occupied households is listed as 4,466. In Tye, the 2000 Census information on total community occupied households is 426, whereas the the total zip code occupied households is listed as 9,100.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petitions filed by Cox for a determination of effective competition in the Franchise Areas **IS GRANTED IN PART AND DENIED IN PART**.

7. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities in Attachment A overseeing Cox **ARE REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁵47 C.F.R. § 0.283.

Attachment A

Communities Subject to Competing Provider Effective Competition

CSR-6877-E, CSR-6878-E, CSR-6879-E, CSR-6880-E, CSR-6881-E, CSR-6882-E, CSR-6883-E, CSR-6884-E, CSR-6885-E, CSR-6886-E

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Clovis	NM0015	27.08%	12,458	3374
Texico	NM0048	38.41%	381	146
Farwell	TX0005	37.33%	499	186
Lubbock	TX0004	19.46%	77,527	15,090
Shallowater	TX2277	32.34%	745	241
Wolfforth	TX2278	40.00%	900	360
Floydada	TX0447	26.47%	1,304	345
Abilene	TX0139	23.72%	41,570	9,860
Snyder	TX0129	27.77%	4,068	1,130
Sweetwater	TX0136	26.10%	4,545	1,186
Amarillo	TX0152	21.75%	67,699	14,727
Canyon	TX0371	28.88%	4,802	1,387
Andrews	TX0218	15.12%	3,478	526
Big Spring	TX0012	17.61%	8,155	1,436
Plainview	TX0111	19.54%	7,626	1,490

CPR= Percent DBS penetration

+ = See Cox Petitions, Exhibit 3.